HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| AEROTEL, LTD., AEROTEL U.S.A., INC., and AEROTEL U.S.A., LLC,<br><br>Plaintiffs,<br><br>v.<br><br>T-MOBILE USA, INC.,<br><br>Defendant. | Case No.: 07-1957<br><br>ANSWER, DEFENSES AND COUNTERCLAIMS |

T-Mobile USA, Inc. ("T-Mobile"), by and through its counsel, as and for its answer to Plaintiffs Aerotel, Ltd., Aerotel U.S.A., Inc. and Aerotel U.S.A., LLC's Complaint for Patent Infringement ("Complaint") and for its defenses and affirmative defenses and its Counterclaims, states as follows:

1. T-Mobile admits that Plaintiffs purport to allege claims for patent infringement. Other than as explicitly stated, T-Mobile denies the remaining allegations of Paragraph 1 of the Complaint.

2. T-Mobile admits that Plaintiffs purport to invoke the original jurisdiction of this Court under the referenced statutes. Other than as explicitly stated, T-Mobile denies the remaining allegations of Paragraph 2 of the Complaint.

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3. T-Mobile admits that Plaintiffs purport to invoke the jurisdiction of this Court, and that T-Mobile resides in this District. Other than as explicitly stated, T-Mobile denies the remaining allegations of Paragraph 3 of the Complaint.

**THE PARTIES**

4. T-Mobile denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 of the Complaint, and on that basis denies them.

5. T-Mobile denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Complaint, and on that basis denies them.

6. T-Mobile denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Complaint, and on that basis denies them.

7. T-Mobile denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 of the Complaint, and on that basis denies them.

8. T-Mobile denies that T-Mobile was "formerly Voicestream Wireless Corporation and Powertel, Inc." as alleged in Paragraph 8 of the Complaint, and denies the second sentence of Paragraph 8 of the Complaint. Except as explicitly stated, T-Mobile admits the allegations of Paragraph 8 of the Complaint.

**PATENT INFRINGEMENT**

9. T-Mobile admits that Exhibit A to the Complaint appears to be a copy of U.S. Patent No. 4,706,275 ("the '275 Patent"), with the referenced purported assignee and title, that the '275 Patent appears to have issued on November 10, 1987, and that the Patent appears generally to be directed to methods and systems for making prepaid telephone calls. T-Mobile denies that the named inventor on the '275 Patent is "Zvi Kami" but admits that the named inventor is "Zvi Kamil." Other than as explicitly stated, T-Mobile denies the allegations of Paragraph 9 of the Complaint.

10. T-Mobile admits the allegations of Paragraph 10 of the Complaint.

11. T-Mobile admits the allegations of Paragraph 11 of the Complaint.

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12. T-Mobile denies knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 of the Complaint, and on that basis denies them.

13. T-Mobile admits the allegations of Paragraph 13 of the Complaint.

14. T-Mobile denies the allegations of Paragraph 14 of the Complaint.

15. T-Mobile denies the allegations of Paragraph 15 of the Complaint.

**PLAINTIFFS' PRAYER FOR RELIEF**

T-Mobile avers that the lettered paragraphs with respect to all counts of the Complaint, which appear on page 4 of the Complaint, do not contain any allegations that require a response. To the extent, if any, that such paragraphs include any allegations requiring a response T-Mobile denies them.

**DEFENSES AND AFFIRMATIVE DEFENSES**

As and for its separate defenses and affirmative defenses to Plaintiffs' Complaint, T-Mobile asserts the following:

1. Upon information and belief, Plaintiffs, or some of them, lack standing to bring this action.

2. The Complaint fails to state a claim upon which relief may be granted.

3. T-Mobile has not infringed any valid and enforceable claim of the '275 Patent, either literally, directly, indirectly, as a contributory or inducing infringer, or under the doctrine of equivalents.

4. The claims of the '275 Patent, as properly construed and interpreted in light of the prior art, its prosecution history, its post-issuance reexamination history and otherwise, are invalid and unenforceable for failure to comply with one or more of the conditions for patentability as set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

5. To the extent that Plaintiffs or their predecessors in interest of the '275 Patent failed properly and sufficiently to notify T-Mobile of the alleged infringement of the '275 Patent, including but not limited to notice of infringement under 35 U.S.C. § 287, T-Mobile is not liable

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to Plaintiffs for damages from any allegedly infringing activity that occurred prior to the receipt of actual notice of infringement of the ‘275 Patent by T-Mobile.

6. Some of Plaintiffs’ claims are barred by the statute of limitations.

7. Plaintiffs’ claims are barred by the doctrines of laches and/or acquiescence.

8. T-Mobile reserves the right to assert additional defenses which may be disclosed during discovery in this action.

**COUNTERCLAIMS**

Defendant and Counterclaim Plaintiff T-Mobile USA, Inc., as and for its Counterclaims against Plaintiffs for a Declaratory Judgment that the ‘275 Patent is invalid, unenforceable, and not infringed by T-Mobile, asserts as follows:

**A. Parties**

1. Counterclaim Plaintiff T-Mobile is a Delaware corporation with principal place of business at 12920 SE 38th Street, Bellevue, WA, 98006.

2. Based on the allegations by Plaintiffs, Plaintiff Aerotel, Ltd. is an Israeli corporation with principal place of business at 19 Hamashbir Street, Holon 58856, Israel.

3. Based on the allegations by Plaintiffs, Plaintiff Aerotel USA, Inc. is a Delaware corporation with principal place of business at 608 Fifth Avenue, Suite 300, New York, New York, 10020.

4. Based on the allegations by Plaintiffs, Plaintiff Aerotel USA, LLC is a Delaware corporation with principal place of business at 6 Coachman’s Court, Old Westbury, New York, 11568.

**B. Jurisdiction and Venue**

5. These Counterclaims arise under the Patent Laws of the United States, as enacted under Title 35 of the United States Code, and the provisions of the Federal Declaratory Judgment Act, as enacted under Title 28 of the United States Code. The jurisdiction of this Court is proper under 35 U.S.C. § 271 *et seq.*, and 28 U.S.C. §§ 1331, 1338, and 2201-2202. As evidenced by the Complaint in this matter, there exists an actual controversy between Plaintiffs, on the one

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hand, and T-Mobile, on the other hand, as to whether the ‘275 Patent is valid, enforceable, and infringed.

6. Personal jurisdiction exists over the parties and the requirements for venue are satisfied in this District.

**COUNTERCLAIM I**

**Declaratory Relief Regarding Invalidity**

7. T-Mobile realleges and incorporates by reference the allegations contained in paragraphs 1 through 8 of T-Mobile’s Defenses and Affirmative Defenses, T-Mobile’s responses to the allegations contained in paragraphs 1-15 of the Complaint, and paragraphs 1 through 6 of T-Mobile’s Counterclaims.

8. As admitted by Plaintiffs, the ‘275 Patent was issued by the United States Patent and Trademark Office on November 10, 1987. Plaintiffs contend that Aerotel, Ltd. owns all rights in the ‘275 Patent, and that Aerotel USA, Inc. and Aerotel USA, LLC have the right to license and enforce the ‘275 Patent in the United States.

9. Plaintiffs allege infringement of one or more claims of the ‘275 Patent by services, products or systems offered by T-Mobile. There is an actual controversy with respect to whether the claims of the ‘275 Patent are valid.

10. The claims of the ‘275 Patent are invalid because they fail to satisfy one or more of the statutory requirements for patentability specified in Title 35 of the United States Code, including, *inter alia*, 35 U.S.C. §§ 101, 102, 103 and/or 112.

11. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., T-Mobile requests the declaration of the Court that the ‘275 Patent is invalid.

**COUNTERCLAIM II**

**Declaratory Relief Regarding Non-Infringement**

12. T-Mobile realleges and incorporates by reference the allegations contained in paragraphs 1 through 8 of T-Mobile’s Defenses and Affirmative Defenses, T-Mobile’s responses

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to the allegations contained in paragraphs 1-15 of the Complaint, and paragraphs 1 through 11 of T-Mobile's Counterclaims.

13. As admitted by Plaintiffs, the '275 Patent was issued by the United States Patent and Trademark Office on November 10, 1987. Plaintiffs contend that Aerotel, Ltd. owns all rights in the '275 Patent, and that Aerotel USA, Inc. and Aerotel USA, LLC have the right to license and enforce the '275 Patent in the United States.

14. Plaintiffs allege infringement of one or more claims of the '275 Patent by services, products or systems offered by T-Mobile. There is an actual controversy with respect to whether the '275 Patent is infringed, directly or indirectly or contributorily, by any services, products or systems offered by T-Mobile.

15. T-Mobile denies that it infringes any valid claim of the '275 Patent, either literally, directly, contributorily, by inducement and/or under the doctrine of equivalents.

16. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, T-Mobile requests the declaration of the Court that T-Mobile does not infringe any claim of the '275 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, T-Mobile prays that this Court enter judgment:

A. Dismissing Plaintiffs' Complaint and the claims therein against T-Mobile with prejudice;

B. Adjudging, declaring, and decreeing that the claims of the '275 Patent are void, invalid, and not infringed by T-Mobile;

C. Decreeing that this case is an exceptional case under 35 U.S.C. § 285, and awarding T-Mobile its reasonable attorneys' fees and the costs of this action; and

D. Granting such other and further relief as the Court deems just and proper.

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**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, T-Mobile hereby demands a trial by jury of all issues so triable.

DATED this 11th day of February, 2008.

STOKES LAWRENCE, P.S.

By: /s/ Shannon M. Jost
Shannon M. Jost (WSBA #32511)
Scott A.W. Johnson (WSBA #15543)

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